



### Cottage Foods Stakeholder Meeting #5 - Meeting Notes

**Date:** 03/01/2016    **Time:** 9:00am - 3:00 pm    **Location:** Natural Grocers  
Vitamin Cottage Event Room

#### **In Attendance:**

CDPHE DEHS - Jeff Lawrence  
CDPHE DEHS - Cary Ruble  
CDPHE DEHS - Brianne Ratajczak  
CDPHE DEHS - Erika Atherly  
CF Producer - Evelyn Evers  
CF Producer- JM Faye  
CF Producer - Joanne Littau  
CF Producer - Marilyn Kakudo  
CF Producer - Nancy McNally  
CF Producer - Steve Bass  
CF Producer - David Kaminer  
Natural Grocers - Alan Lewis  
Preserving Community - Luther Green  
The Garden - Aleece Raw  
Western Colorado Congress - Monica Wiitanen  
Western Colorado Congress - Rachel Zatterstrom

#### **Teleconference Attendees:**

CDA - Wendy White  
CSU Extension Service - Ann Zander  
CSU Extension Service-Mary Snow  
CF Producer - Joanna Schlichenmayer  
CF Producer & Provider Group - Richard Gould  
Garfield County Public Health-Joshua Williams  
Montrose Health and Human Services-Vera Stauffer  
Montrose County Health and Human Services-Jim Austin

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**9:25 AM**      Commence meeting with review of agenda and introductions.

**9:10 AM**      Review and revise regulation and unvetted stakeholder proposed revisions.

**General**      Reviewed our approach for the meeting. Will start at beginning of the regulation and review and discuss stakeholder proposed revisions pertaining to each section.

The group agreed to change from upper case to lower case the “c” and the “f” in the words “*cottage foods*” throughout the regulation.

**Titles**      The group agreed to add “*Cottage*” to the title. The spelling of “*Production*” in the title was corrected. Revised title reads, “***RULES AND REGULATIONS GOVERNING THE PRODUCTION OF TIER 2 COTTAGE FOODS IN THE STATE OF COLORADO.***”

#### **15.1 Authority**

Stakeholders expressed concerns regarding the removal Tier 1 references from the regulation and the resulting lack of clarity regarding the Departments regulatory expectation of Tier 1 producers. Although stakeholders expressed concern associated with the elimination of Tier 1 references from the regulation, consensus remains regarding its removal. Subsequent group discussion focused on the potential

development of Tier 1 cottage food guidance documents, the content and format of guidance, and regulatory requirements that apply to both Tier 1 and Tier 2 cottage food producers. Stakeholders proposed a table within guidance distinguishing the requirements that apply to the production Tier 1 versus Tier 2 cottage foods. Ultimately stakeholders agreed to revise section 15.1 to clarify that the regulations represent requirements for the production of Tier 2 cottage foods only and that guidance would be necessary to address requirements of Tier 1 cottage food producers. The following verbiage was added, “, and represent the additional requirements for the production of tier 2 cottage foods.”

## **15.2 Scope and Purpose**

- 15.2(B)(1) Stakeholders indicated that this section did not clearly exempt Tier 2 cottage foods from meeting the provisions of the *Colorado Retail Food Establishment Rules and Regulations* or the *Colorado Wholesale Food Regulations Current Good Manufacturing Practice In Manufacturing, Packing Or Holding Human Food*. Stakeholders proposed deleting “*This regulation does not apply to*”; however, the phrase is a standard formatting/inclusion required by the Colorado Secretary of State and will not be removed or revised.
- 15.2(B)(4) Q: *I thought the dollar amount applied to each recipe?*
- A: It could be looked at in that manner, if a recipe represents a different eligible food product.
- 15.2(C) Stakeholders proposed and agreed to the addition of new section (C) that reads, “*Tier 2 cottage food producers are not subject to the requirements of the Colorado Retail Food Establishment Rules and Regulations and the Wholesale Food Regulations Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Human Food.*”

## **15.4 Definitions**

Stakeholders agreed to not incorporate *Acidulants, Acidified Foods, Communicable Disease, or Relish* in the definitions section of the regulation. Several other definitions had minor changes that are not documented below, but included changes such as typographical errors and verb tense.

- 15.4(A)(1) As proposed, replaced “25-5-4” with “25-5-410”.
- 15.4(A)(6) *Fermented Vegetables*

Stakeholders expressed a desire, although not all agreed, to allow for fermented vegetables such as sauerkraut, kimchi, and fermented pickles to be considered as a Tier 2 food. The words “*live probiotic*” were added to the definition to read, “*Fermented Vegetables* means *live probiotic vegetables that are exposed to conditions that allow acid-producing microorganisms to reduce the pH to 4.6 or lower and includes the foods commonly referred to as kimchi and sauerkraut.*”

Q: *Is fermenting the same type, similar process to, or a more hazardous or safer process than pickling?*

A: Fermenting is considered a pickling process and is generally is safer than simply adding acid to lower the pH of the product. FDA requires commercial processors (due to the risk associated with the acidification process) to have:

1. Better process training.
2. Approved recipes.
3. A filed process for **every** jar size, package type, flavor and level of heat.

Q: *Does the process of making salsa fit the definition of pickling?*

A: No. Salsas are not considered pickled vegetables.

15.4(A)(7) Food-Contact Surfaces

Stakeholders were unclear as to what is meant by a food contact surface. The definition of food contact surface was revised by removing “and those”, “from”, and “surfaces in contact with food” and adding “including”. Stakeholders agreed that guidance is needed to further explain what food contact surfaces are. The definition now reads, “Food Contact Surfaces means those surfaces of equipment and utensils with which food normally comes in contact, including surfaces which food may drain, drip, or splash back onto.”

15.4(A)(12) Pickled Vegetables

Stakeholders provided significant discussion on what should be considered pickled vegetables. Discussion included what can or cannot be allowed. Although revisions were agreed to by stakeholders, no final determinations were made and the group agreed to put overall concerns regarding fermented and pickled vegetables in the parking lot for future meetings. At this time the group added “equilibrium” and deleted “Pickled vegetables do not include salsas.” to read, “Pickled Vegetables means low-acid vegetables that have been preserved in vinegar, brine, or a similar solution resulting in a finished product equilibrium pH of 4.6 or lower.”

15.4(A)(13) Process Authority

The group agreed to revise the definition of Process Authority to include the functions/roles of a process authority. The definition now reads, “Process Authority means person(s) or organization(s) having expert knowledge of pickling processing requirements who examines the recipe for ingredients, preparation methods, product packaging and storage, and food safety precautions required to produce a safe product. A process authority must have access to facilities for making such determinations.” There is a list of process authorities available on the department’s website:

<https://www.colorado.gov/pacific/cdphe/haccp-frequently-requested-information>

15.4(A)(14) Process Plan

Stakeholders aligned this definition with the changes made in the *Process Authority* definition. The group agreed to delete “equipment used in the production of these products, along with the products associated labels” from the definition.

15.4(A)(16) Production Kitchen

A stakeholder indicated that the definition was confusing because “*production kitchen*” is not in statute. The department clarified that “*production kitchen*” is used in Sections 15.8.3 Water Quality Testing and Section 15.8.4 Sewage Disposal of the regulation. The group agreed to add “*used for the production of Tier 2 cottage foods*” and remove “*similar venue for sale directly to consumers*” from the definition because *home, commercial, private or public* includes all possible options for a production kitchen.

15.4(A)(18) Registration

Q: *Is there a fee for registration?*

A: *No.*

15.4(A)( 19) Deleted definition of Relish (formerly definition 19) and renumbered remaining definition terms accordingly.

15.4(A)(19) Sanitizer (formerly Sanitization)

It was decided to change the definition to “Sanitizer” instead of “Sanitization” to read, “*Sanitizer means an effective bactericidal treatment by a product that is registered with the U.S. Environmental Protection Agency and provides enough concentration of chemicals for sufficient time to reduce the bacterial count, including pathogens, to a safe level.*.” The group agreed to table additional conversation until Section 15.5(E) General Requirements.

15.4(A)(20) Single-Use Gloves

Group agreed to add “food-grade” to further clarify the definition of Single-Use Gloves.

15.4(A)(21) Standardized Recipe

Added “*process authority approved*” and deleted “*Standardized recipes shall include the common name of the product; the ingredients; the exact weight or volume of each ingredient; preparation instructions; cooking time and temperatures, if required; time necessary to achieve an equilibrium pH of 4.6 or lower; and serving size or recipe yield.*” to read, “Standardized Recipe *means a process authority approved recipe that has been tested for consistency of product.*” This definition will be further revised after Section 15.8.5 Process Review is finalized.

15.4(A)(23) Venue

The method of delivery and sales completed over the internet were discussed at length. Stakeholders noted that the sale takes place at delivery, when the product is given to the customer. Others felt that the sale takes place when money is collected. Some agreed that this is not considered the sale, but the payment portion of the business transaction. All were in support of the internet being a

marketing tool if the site disclosed the disclaimer and product information listed in Section 15.6.A and required by the law.

There was also a discussion about representatives of the producer delivering the product to the consumer. Various types of ‘representatives’ were discussed, such as a farmer’s market where a clerk is present to sell various producers’ products or a Community Supported Agriculture (CSA), where orders from members of the CSA are made in advance and the producer drops off the product to fulfill the order. Another method of delivery discussed was the use of the United States Postal Service (USPS). Some stakeholders felt strongly that USPS delivery concept is no different than a farmer’s market or a CSA, where the producer is not interacting face to face with the consumer. Some mentioned the practice of collecting down payments from consumers prior to making the product. For example, this would be done when making a wedding cake or expensive cookies. Some stakeholders agreed that if an interaction is made with the consumer, does it matter if the producer is delivering the product to the consumer face to face? Lastly, the group agreed to focus on the delivery of the product and not the payment portion of the transaction, as this focus aligns with the spirit of the Cottage Foods Act. The department agreed to seek guidance from the attorney general regarding statutory authority regarding delivering the food to the ultimate consumer.

A discussion was held on the responsibilities of the producer after the sale. For example, what if the customer redistributes the product or takes the product out of the state? The producer does not have responsibility for the customer’s actions. The producer cannot sell the product out of state or to retail (grocery stores or restaurants) or food manufacturers.

The group agreed to delete “*purchase and*” and “*This does not include internet sales, grocery stores, restaurants, and other licensed retail food establishments and food manufacturers.*” from the definition to read, “*Venue means the location where a consumer takes possession of the tier 2 cottage food product, which includes, but is not limited to, the producer’s premises, the producer’s roadside stand, a farmer’s market, a community supported agriculture organization, and other similar venues where the product is sold directly to consumers.*” Stakeholders agreed that the definition of Venue will be further discussed after input is received from the attorney general and following review of Section 15.7 Point of Sale is completed by stakeholders.

## **15.5 General Requirements**

- 15.5(A) The group agreed to delete “*Reportable communicable diseases and disease outbreaks shall immediately be reported to the Department.*” All agreed that guidance should be developed to further clarify this portion of the regulation.
- 15.5(B) “*Production*” was added prior to kitchen. Maintaining a premise free of pests is a standard practice. If the premises are not maintained then it could harbor pests and in turn the pests could eventually enter the home. The group agreed to add “*in a clean and sanitary condition and*” and replace “*rodents and insects*” with “*pests*” to read, “*The production kitchen and storage areas used to produce tier 2 cottage food products shall be maintained in a clean and sanitary condition and free of pests.*” The idea of adding a section regarding pesticide use and storage was brought up and

will be addressed later in Section 15.5(E). A stakeholder mentioned the need to include delivery vehicles in addition to kitchen and storage areas listed in this section.

- 15.5(C)(2) Stakeholders expressed that this section should be more general. That it does not include all of the possibilities that would require handwashing, so why list some. This list could be endless. Others mentioned deleting the entire section because it pertains to both Tier 1 and Tier 2 cottage foods or making it a general training curriculum requirement. The section was revised from listing activities, to providing more general concepts by deleting *“after handling soiled equipment or utensils”* and *“after engaging in other domestic activities such as personal cooking, laundry, smoking, eating, or telephone use”*, replacing *“children”* with *“dependents”* and added *“if used”*. Section now reads *“After engaging in any activities that contaminate their hands and or exposed portions of their arms including but not limited to before leaving the restroom, after caring for animals or dependents, and before putting on single-use gloves, if used, and;”*

Stakeholders agreed that guidance should be provided that details when to wash hands and when and how to use hand sanitizer.

Stakeholders agreed to add *“, if used,”* after single-use gloves to avoid it reading as if single-use gloves were required to be used.

- 15.5(C)(3) A stakeholder mentioned that they didn’t understand the purpose for having Section 15.5(C)(3). Clarification was provided that sanitizer is commonly substituted for handwashing with soap and water. The group agreed to delete *“be used in addition to but”* and add *“be used.”* The section now reads, *“Hand antiseptics/sanitizers may not be used in place of proper handwashing.”*
- 15.5(D) Group agreed to add *“appropriate for food production and”* to read, *“All food contact surfaces, equipment, and utensils used for the preparation or packaging of any tier 2 cottage food products shall be appropriate for food production and maintained in good repair.”* Stakeholders supported addressing equipment in its own section and not in the same section as food contact surfaces. The group agreed that section 15.5(D) will discuss equipment and that Section 15.5(E) will address food contact surfaces and the cleaning and sanitizing requirements for those surfaces. The group agreed to develop guidance for defining what a food contact surface is and how it should be cleaned and sanitized.
- 15.5(E) Group agreed to add *“Food contact surfaces and utensils shall be”* and *“air dried”* to read, *“Utensils and food contact surfaces shall be washed, rinsed, sanitized, and air dried before each use.”*
- 15.5(E)(1) Stakeholders indicated that this section was confusing and not easily understood. The group agreed to delete *“and”*, *“be registered with the Colorado Department of Agriculture,”* and *“and 40 CFR 180.940”*. The section now reads, *“Sanitizers shall have a U.S. Environmental Protection Agency registration number, be designated as a food contact surface sanitizer, and be used in accordance with labeled instructions, including concentration, contact time, method, and surfaces.”*
- 15.5(E)(3) The group agreed to add new section 15.5(E)(3), *“3. Sanitizers must be properly stored.”* to address the storage of sanitizers.

## 15.6 Product Labeling

The group agreed to change the title of this section to *“Product Labels”*.

A stakeholder suggested adding a separate section specific to packaging. Specifically, requiring packing to be completed at the production kitchen and prior to transport to the point of delivery.

- 15.6(A) *“Tier 2”*, *“have an affixed label”* were added and *“and included an affixed label”* was deleted by consensus. Section now reads, *“Tier 2 cottage foods shall have an affixed label in accordance with the requirements outlined in Section 25-4-1614(3)(a), C.R.S., that includes:”*.
- 15.6(A)(1-7) A stakeholder mentioned their concern with the word “identification” in 15.6(A)(1). Others Stakeholders supported using guidance to clarify this section. A stakeholder questioned if a registration number [15.6(A)(6)], was necessary. Edits were made by the group to this section to align with the statute. This section now reads, *“1. Identification of the product; 2. The producer’s name and address at which the food was prepared; 3. The producer’s current telephone number or electronic mail address; 4. The date on which the food was produced; 5. A complete list of ingredients; 6. Registration number, as issued by the Department; and 7. The following disclaimer: “This product was produced in a home kitchen that is not subject to state licensure or inspection and that may also process common food allergens such as tree nuts, peanuts, eggs, soy, wheat, milk, fish, and crustacean shellfish. This product is not intended for resale.”*
- 15.6(B) Some stakeholders were unclear as to what standard labeling guidance is. The group agreed that this section should be deleted and that general labeling guidance shall be provided.

## 15.7 Point of Sale

- 15.7(A) Added *“shall”* and *“as defined in 15.4.A.25.”*, and deleted *“must”* and *“an appropriate”* section now reads, *“Products produced under 25-4-1614(2)(b)(I), C.R.S., shall be sold from a venue as defined in 15.4.A.25 directly to the ultimate consumer and shall not be sold or distributed outside of Colorado.”*
- Further discussion will be needed regarding the use of the phrase *“directly to the ultimate consumer”*. The result will affect the definition of a “Venue” and Section 15.7, *Point of Sale*.
- 15.7(B) Changed *“infer”* to *“imply.”* Deleted *“or its authorized agents or employees”* section now reads, *“A producer shall not in any way display, convey or imply that the products produced and offered for sale or distribution are endorsed, approved, or certified by the Department.”*
- 15.7(C) Added *“Tier 2”* and *“and/or website”*. Section now reads, *“A producer selling tier 2 cottage foods shall conspicuously display a placard, sign, or card at the point of sale and/or website with the following disclaimer:”*

**2:30 PM      Discuss future stakeholder meeting schedule and objectives**

A stakeholder from Pueblo suggested holding the next meeting in Pueblo or Colorado Springs. She indicated that there are a number of producers in that area that would like to attend in person. Based on that suggestions and comments from the group the next meeting was agreed to be held in Colorado Springs. Location still TBD.

**2:45 PM      Jeff Lawrence: Status of Senate Bill 16-058: Cottage Poultry**

*Q: What does this mean to this process?*

A: If the bill passes we would not continue with this process or pass regulations. We are advocating re-directing our funding to outreach and assistance activities focusing on training and assuring product safety. We are not lobbying against the bill as it is currently proposed.

Our goal whether we have regulations or not is to have solid foundation and working relationship with the industry. If the bill gets adopted it simply changes our implementation approach/strategy, we would direct funding towards compliance assistance.

*Q: So all the work we have done this for is for nothing?*

A: No. These meetings have provided the foundation for ongoing and productive interactions between CDPHE and the industry and that is invaluable.

**3:00 PM      Meeting adjourned.**

**Next meeting:**      April 5, 2016 from 9:00 am to 3:00 pm  
Location: TBD (Colorado Springs)